

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 2005-10667GAO

\*\*\*\*\*  
JUDITH FESTA and \*  
ALFRED FESTA \*  
v. \*  
\*  
SIMON PROPERTY GROUP, LP \*  
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**FURTHER REQUEST FOR ENLARGEMENT OF TIME TO  
CONCLUDE DISCOVERY**

Now comes the plaintiff in the above referenced matter and respectfully moves this Honorable Court for leave to propound a single Rule 34 request to the defendant and inspect and photograph defendant's premises per Rule 34(a). As grounds therefore plaintiff states as follows.

- (1) This accident occurred on or about November 26, 2004 when plaintiff slipped and fell on an icy condition allegedly caused by a defect in defendant's parking lot at the Square One Mall in Saugus, Massachusetts.
- (2) Pursuant to this Court's Order discovery was to be completed by December 31, 2005.
- (3) Following the exchange of paper discovery a Rule 30(b)(6) deposition of the defendant had been scheduled for December 9, 2005 but was continued because of a snowstorm. Because of scheduling conflicts the deposition finally went forward on January 18, 2006.

(4) At this deposition certain information was obtained that prompted the need for some minor additional discovery to wit, a brief deposition of a subcontractor to the defendant that was the subject of an earlier motion to enlarge the discovery deadline filed on February 7, 2006 and some additional Rule 34 discovery.

(5) Immediately following the Rule 30(b)(6) deposition of the defendant, and because of that testimony, plaintiff also propounded a single request for production of documents pursuant to which plaintiff has requested "Any and all materials of whatever kind or nature pursuant to which UNICCO [a subcontractor] requested payment for salting and/or sanding of the parking lot at the Square One Mall from the period of October 1, 2004 through June 1, 2004." Because of the expiration of this Court's discovery order defendant objects to this request.

(6) Also, because of an issue as to whether the defect on defendant's premises has been repaired, on January 18, 2006 plaintiff requested permission pursuant to Rule 34(a) to examine and photograph the area of the defendant's premises where the accident occurred. Again, because of the expiration of this Court's discovery order on December 31, 2005 the defendant objects.

(7) Plaintiff was not dilatory in scheduling the Rule 30(b)(6) deposition of the defendant. It had been scheduled at a mutually agreeable date after paper discovery had been exchanged well before the discovery deadline but had to be continued because of a snowstorm. Once the deposition was taken (by agreement) on January 18, 2006 plaintiff's counsel immediately propounded the Rule 34 requests.

(8) Nothing plaintiff's counsel seeks via this motion will delay this trial in any respect.

Dated: February 8, 2006

The Plaintiffs, Judith Festa and  
Alfred Festa,  
By their attorney,  
Joseph G. Abromovitz, P.C.

s/Joseph G. Abromovitz

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**CERTIFICATE OF SERVICE**

I, Joseph G. Abromovitz, hereby certify that on the 8<sup>th</sup> day of February, 2006, I served a copy of this document by first class mail, postage prepaid to the following counsel of record:

Sean J. Milano, Esquire  
Morrison Mahoney, LLP  
250 Summer Street  
Boston, MA 02210

s/Joseph G. Abromovitz

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Joseph G. Abromovitz